

CHRISTENSEN JAMES & MARTIN

Kevin B. Christensen, Esq.
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Daryl E. Martin, Esq.
Nevada Bar No. 006735
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel.: (702) 255-1718
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EMPLOYEE PAINTERS TRUST; PAINTERS
VACATION TRUST; PAINTERS JOINT
COMMITTEE; PAINTERS JOINT
APPRENTICESHIP TRAINING COMMITTEE;
PAINTERS INDUSTRY PROMOTION FUND;
PAINTERS JOINT COMMITTEE INDUSTRY
PROMOTION FUND; PAINTERS ORGANIZING
FUND; PAINTERS LABOR MANAGEMENT
COOPERATION COMMITTEE; PAINTERS
LABOR MANAGEMENT COOPERATION
INCENTIVE; PAINTERS HEALTH AND
SAFETY AND UPGRADE TRAINING AWARD
PROGRAM, each acting by and through their
designated fiduciaries John Smirk and/or Thomas
Pfundstein; and the INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES
INDUSTRY PENSION TRUST FUND, acting by
and through its designated fiduciary Gary J.
Meyers,

Plaintiffs,

v.

RIGGIO BROTHERS CONSTRUCTION, INC., a
Nevada Corporation; BIONE D. RIGGIO, an
individual; WESTERN SURETY COMPANY, a
corporation qualified to act as surety in the State of
Nevada; JOHN DOES I-XX, inclusive; ROE
ENTITIES I-XX inclusive,

Defendants.

Case No.: 2:09-CV-01831-KJD-PAL

**PLAINTIFFS' APPLICATION
FOR JUDGMENT IN FAVOR OF
DEFENDANT RIGGIO
BROTHERS CONSTRUCTION,
INC. FOR USE OF PLAINTIFFS
AGAINST GARNISHEES
STRAUB CONSTRUCTION, INC.
AND RAFAEL CONSTRUCTION,
INC. [N.R.S. 31.300]**

[Expedited Hearing Requested]

COME NOW the Plaintiffs identified above ("Plaintiffs" or "Trust Funds"), by and through
their attorneys, Christensen James & Martin, and hereby submit their Application for Judgment in

CHRISTENSEN JAMES & MARTIN
7440 W. SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

1 Favor of Defendant Riggio Brothers Construction, Inc. ("RBC") for Use of Plaintiffs Against
 2 Garnishees Straub Construction, Inc. ("Straub") and Rafael Construction, Inc. ("Rafael") pursuant
 3 to N.R.S. 31.300. This Application is made and based upon the following points and authorities,
 4 the attached affidavits and exhibits, the pleadings on file with the Clerk of Court and upon any
 5 argument heard by the Court.

6 DATED this 29th day of January, 2010.

7 **CHRISTENSEN JAMES & MARTIN**

8 By: /s/ Daryl E. Martin
 9 Daryl E. Martin, Esq.
 Nevada Bar No. 6735
 10 7440 W. Sahara Ave.
 Las Vegas, NV 89117
 11 Attorneys for Plaintiffs

12 **Memorandum of Points and Authorities**

13 **I.**

14 **Statement of Facts**

15 On October 27, 2009, this Court entered Default Judgment in favor of Plaintiffs and against
 16 Defendants RBC and Bione D. Riggio in the amount of \$174,326.36 ("Judgment"). RBC was a
 17 subcontractor licensed to do business in the State of Nevada. The Judgment covers delinquencies
 18 accrued for nonpayment of fringe benefit contributions for work performed on construction projects
 19 in southern Nevada during the period of July 2008 through the date of the Judgment. During that
 20 period, RBC and its employees performed work at various projects for several different general
 21 contractors. Plaintiffs have reason to believe that certain of the general contractors still owe money
 22 to RBC for work performed on their projects. RBC was able to identify Straub and Rafael as two
 23 such general contractors. Both Straub and Rafael are licensed by the Nevada State Contractors
 24 Board¹ and performed construction work in southern Nevada, using RBC as a subcontractor.
 25
 26
 27
 28

¹ A true and correct copy of the Nevada State Contractors Board license search detail for Straub is attached hereto as Exhibit "1". A true and correct copy of the Nevada State Contractors Board license search detail for Rafael is attached hereto as Exhibit "2".

On December 15, 2009 the Court issued Writs of Execution [Docket Nos. 30 & 31] to the United States Marshal's Service ("Marshal") to execute on RBC's assets to satisfy the Judgment.² Plaintiffs then issued Writs of Garnishment to the Marshal to serve on several of RBC's general contractors, including Straub and Rafael, pursuant to N.R.S. 31.240 et seq. and consistent with 15 U.S.C. § 1671 et seq. The Writs of Garnishment include the interrogatories set forth in N.R.S. 31.290, which garnishees are required to answer under oath. Consistent with N.R.S. 31.310, the Writs of Garnishment commanded the garnishees to retain possession of any money owed to RBC.

a. Rafael Writ of Garnishment

The Marshal served Rafael with the Writ of Garnishment on January 6, 2010. Rafael answered the Writ and interrogatories the same day.³ The relevant interrogatories and Rafael's answers are restated below:

1. Are you in any manner indebted to the Defendant(s) Riggio Brothers Construction, Inc. or Bione D. Riggio, or any of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

Answer: Yes, due when we receive retention from owner. \$14,130.95

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, goods, chattels, rights, credits or choses in the action of the Defendant(s), or any of them, or in which Defendant(s) are interested? If so, state its value and state fully all particulars.

Answer: \$14,130.95 due when Clark County Water Reclamation pays Rafael Construction.

5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

Answer: Catherine Robinson, Controller, Rafael Construction
7120 Rafael Ridge Way
Las Vegas, NV 89119

By its own statement, Rafael has confirmed that it owes Riggio \$14,130.95, which money will be available upon receipt of the funds from the project owner.

² Separate Writs were issued for RBC and its co-debtor, Bione D. Riggio. Bione D. Riggio filed a petition for personal bankruptcy after the Writs of Execution and the Writs of Garnishment were issued. The Plaintiffs have taken no further action against Mr. Riggio or his assets since the filing of the bankruptcy petition.

³ A true and correct copy of Rafael's answer to the Writ of Garnishment is attached hereto as Exhibit "3".

b. Straub Writ of Garnishment

The Marshal served Straub with the Writ of Garnishment on January 20, 2010. On January 22, 2010, Straub answered the Writ of Garnishment and interrogatories.⁴ The relevant interrogatories and Straub's answers are as follows:

1. Are you in any manner indebted to the Defendant(s) Riggio Brothers Construction, Inc. or Bione D. Riggio, or any of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

Answer: Straub Construction, Inc. is holding a progress payment in the amount of \$12,222.01. Additionally, SCI is holding retention in the amount of \$85,790.31. The retention payment is not due and will not be due until 35 days after SCI receives final payment from the Owner.

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, goods, chattels, rights, credits or choses in the action of the Defendant(s), or any of them, or in which Defendant(s) are interested? If so, state its value and state fully all particulars.

Answer: See #1

5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

Answer: Kyle Campbell
Risk Manager/Corporate Counsel
Straub Construction, Inc.
202 W. College St., Suite 201
Fallbrook, CA 92028

In summary, Straub owes RBC a progress payment in the amount of \$12,222.01 and retention in the amount of \$85,790.31 for a total amount of \$98,012.32. The progress payment is currently in the possession of Straub and the retention payment will be available 35 days after receipt of funds from the project owner.

II.

Argument

Pursuant to F.R.C.P. Rule 64, a writ of garnishment may be issued pre- or post-judgment in accordance with state law. Under F.R.C.P. Rule 69, any process issued to enforce a judgment for the payment of money is called a writ of execution. Thus, a writ issued by a federal district court

⁴ A true and correct copy of Straub's answer to the Writ of Garnishment is attached hereto as Exhibit "4".

1 in Nevada for enforcement of a judgment by garnishment will be called a writ of execution, but the
2 U.S. Marshals Service will enforce the writ according to Nevada state procedures for garnishment.
3 *See* F.R.C.P. Rule 69(a)(1); and *see Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S.
4 825, 834 (1988).

5 In Nevada, garnishment proceedings are generally special proceedings governed by N.R.S.
6 Chapter 31. *Frank Settelmeier & Sons, Inc. v. Smith & Harmer, LTD*, 197 P.3d 1051, 1056 (Nev.
7 2008). Under that chapter, writs of garnishment are to be served in the same manner as a summons
8 in a civil action, which gives the court jurisdiction to proceed against the “garnishee defendant.”
9 N.R.S. 31.270. Upon the Marshal’s return showing service of a writ of garnishment, the garnishee
10 formally becomes a party of record and is subject to the jurisdiction of the Court. N.R.S. 31.280.

11
12 When a writ of garnishment is served, the garnishee defendant then has 20 days to answer
13 statutorily specified interrogatories. N.R.S. 31.260; N.R.S. 31.290. If a garnishee defendant admits
14 that it has money or property belonging to the defendant (judgment debtor) “the court shall...upon
15 application of the plaintiff with written notice to the garnishee...enter judgment in favor of the
16 defendant for the use of the plaintiff against the garnishee for the amount of the indebtedness...”
17 *See* N.R.S. 31.300 (emphasis added); and *see Frank Settelmeier & Sons, Inc.*, 197 P.3d at 1056
18 (Nev. 2008). In any event, the garnishee must not pay any of the money to the defendant and must
19 instead retain the money in his possession or control or deliver it to the Marshal for subsequent
20 delivery to the plaintiff. N.R.S. 31.310. To date, Straub and Rafael have apparently complied with
21 their obligations under these statutes, by retaining the money they owe to RBC.

22 Because Straub and Rafael were served with the Writs of Garnishment by the Marshal, they
23 are subject to the jurisdiction of this Court and Judgment should be entered against them as
24 garnishee defendants. Rafael admitted under oath in its Answer to the interrogatories that it owes
25 \$14,130.95 to RBC. Straub admitted under oath in its Answer to the interrogatories that it owes
26 \$98,012.32 to RBC. RBC owes Plaintiffs \$174,326.36 plus interest from the date of Judgment.
27 Plaintiffs are entitled to payment of the money owed to RBC by Straub and Rafael, in partial
28 satisfaction of the Plaintiffs’ Judgment against RBC. Pursuant to N.R.S. 31.300, the Court should

1 enter judgment in favor of RBC for the use and benefit of the Plaintiff Trust Funds against Straub
2 and Rafael, in the amounts admitted in their Answers to the Writs of Garnishment.⁵

3 **Conclusion**

4 Straub and Rafael have each admitted that they each owe money to RBC. RBC, in turn, is
5 indebted to Plaintiffs for the amount of the Judgment, plus interest. Plaintiffs are entitled to receive
6 the money owed to RBC from Straub and Rafael in partial satisfaction of the Judgment. N.R.S.
7 31.300 was enacted specifically to permit judgment creditors, like the Trust Funds, to quickly
8 recover from persons who owe monies to judgment debtors. Plaintiffs request this Court enter
9 Judgment against Straub and Rafael and Order them to pay the Trust Funds the amounts admitted
10 in their answers to the interrogatories found in the Writs of Garnishment.

11
12 DATED this 29th day of January, 2010.

13 **CHRISTENSEN JAMES & MARTIN**

14 By: /s/ Daryl E. Martin
15 Daryl E. Martin, Esq.
16 Nevada Bar No. 6735
17 7440 W. Sahara Ave.
18 Las Vegas, NV 89117
19 *Attorneys for Plaintiffs*
20
21
22
23
24
25
26
27
28

⁵ Proposed Judgments and Orders to Pay are attached as Exhibit "5".

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

☒ **ELECTRONIC SERVICE:** Pursuant to Local Rule LR 5-4 of the United States District Court for the District of Nevada, the above-referenced document was electronically filed and served on all appearing parties through the Notice of Electronic Filing automatically generated by the Court.

☒ **UNITED STATES MAIL:** By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

Riggio Brothers Construction, Inc.
and Bione D. Riggio
232 Moose Lane
Las Vegas, NV 89145

Rafael Construction, Inc.
Catherine Robinson, Controller
7120 Rafael Ridge Way
Las Vegas, NV 89119

Straub Construction, Inc.
Kyle Campbell
Risk Manager/Corporate Counsel
202 W. College St., Suite 201
Fallbrook, CA 92028

☐ **OVERNIGHT COURIER:** By depositing a true and correct copy of the above-referenced document for overnight delivery via a nationally-recognized courier, addressed to the parties listed on the attached service list at their last-known mailing address.

☐ **FACSIMILE:** By sending the above-referenced document via facsimile to those persons listed on the attached service list at the facsimile numbers set forth thereon.

CHRISTENSEN JAMES & MARTIN

By: /s/ Daryl E. Martin

Exhibit 1



Nevada State Contractors Board

2310 Corporate Circle, Suite 200 Henderson NV 89074 (702) 486-1100 Fax: (702) 486-1150 Investigations: (702) 486-1110
5670 Gateway Drive, Suite 100 Reno NV 89521 (775) 688-1141 Fax: (775) 688-1271 Investigations: (775) 688-1150
www.nscb.state.nv.us

Nevada State Contractors Board

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License Search Details

Press "Previous Record" to view the previous record in the list

Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

Press "New Search" to select a different search.

License Number: 0046120

Current Date: 01/28/2010 10:53 AM (mm/dd/yyyy)

Business Primary Name:

STRAUB CONSTRUCTION INC

License Monetary Limit: **Unlimited**

Business Address:

**202 W COLLEGE
SUITE 201
FALLBROOK, CA 92028
(760)414-9000**

Phone Number:

Status:

Active

Status Date:

01/05/2009 (mm/dd/yyyy)

Origin Date:

01/21/1998 (mm/dd/yyyy)

Expiration Date:

01/31/2011 (mm/dd/yyyy)

Business Type:

Corporation

Classification(s):

B - GENERAL BUILDING

Principal Name

**STRAUB, RICHARD
STRAUB, DONNA**

Relation Description

**President Qualified Individual
Vice President**

Bonds

Bond Type:

Surety Bond

Bond Number:

186603

Bond Agent:

MCNEILL, GEORGENE

Surety Company:

AMERICAN HOME ASSURANCE

Bond Amount:

\$50,000.00

Effective Date:

01/15/1998 (mm/dd/yyyy)

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[Search Results](#)

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[New Search](#)

2010-01-28 10:53:28 AM

Exhibit 2



Nevada State Contractors Board

2310 Corporate Circle, Suite 200 Henderson NV 89074 (702) 486-1100 Fax: (702) 486-1150 Investigations: (702) 486-1110
5670 Gateway Drive, Suite 100 Reno NV 89521 (775) 688-1141 Fax: (775) 688-1271 Investigations: (775) 688-1150
www.nscb.state.nv.us

Nevada State Contractors Board

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License Search Details

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Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

Press "New Search" to select a different search.

License Number: 0049629

Current Date: 01/29/2010 02:06 PM (mm/dd/yyyy)

Business Primary Name:

RAFAEL CONSTRUCTION INC

License Monetary Limit: **Unlimited**

Business Address:

7120 RAFAEL RIDGE WAY

LAS VEGAS, NV 89119

Phone Number:

(702)451-5511

Status:

Active

Status Date:

12/18/2008 (mm/dd/yyyy)

Origin Date:

01/04/2000 (mm/dd/yyyy)

Expiration Date:

01/31/2011 (mm/dd/yyyy)

Business Type:

Corporation

Classification(s):

C-4 - PAINTING & DECORATING

Principal Name

MEDINA, RAFAEL JR

MEDINA, MELISSA MAE

Relation Description

President Qualified Individual

Secretary/Treasurer Qualified Individual

Bonds

Bond Type:

Surety Bond

Bond Requirement:

No Bond Required

Effective Date:

02/29/2008 (mm/dd/yyyy)

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2010-01-29 2:06:58 PM

Exhibit 3

CHRISTENSEN JAMES & MARTIN
Kevin B. Christensen, Esq.
Nevada Bar No. 000175
Daryl E. Martin, Esq.
Nevada Bar No. 006735
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RECEIVED MARSHAL
UNITED STATES DISTRICT OF NEVADA
2009 DEC 22 PM 3 58

Case No.: 2:09-CV-01831-KJD-PAL

EMPLOYEE PAINTERS TRUST; PAINTERS
VACATION TRUST; PAINTERS JOINT
COMMITTEE; PAINTERS JOINT
APPRENTICESHIP TRAINING COMMITTEE;
PAINTERS INDUSTRY PROMOTION FUND;
PAINTERS JOINT COMMITTEE INDUSTRY
PROMOTION FUND; PAINTERS ORGANIZING
FUND; PAINTERS LABOR MANAGEMENT
COOPERATION COMMITTEE; PAINTERS
LABOR MANAGEMENT COOPERATION
INCENTIVE; PAINTERS HEALTH AND
SAFETY AND UPGRADE TRAINING AWARD
PROGRAM, each acting by and through their
designated fiduciaries John Smirk and/or Thomas
Pfundstein; and the INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES
INDUSTRY PENSION TRUST FUND, acting by
and through its designated fiduciary Gary J.
Meyers,

Plaintiffs,

v.

RIGGIO BROTHERS CONSTRUCTION, INC., a
Nevada Corporation; BIONE D. RIGGIO, an
individual; WESTERN SURETY COMPANY, a
corporation qualified to act as surety in the State of
Nevada; JOHN DOES I-XX, inclusive; ROE
ENTITIES I-XX inclusive,

Defendants.

WRIT OF GARNISHMENT

To: Rafael Construction Inc:

YOU ARE HEREBY NOTIFIED that you are attached as garnishee in the above-entitled

CHRISTENSEN JAMES & MARTIN
7440 W. SAHARA AVE., LAS VEGAS, NEVADA 89117
Ph: (702) 255-1718 & FAX: (702) 255-0871

1 action and you are commanded not to pay any debt due from yourself to the said, **Riggio**
 2 **Brothers Construction, Inc.** or **Bione D. Riggio**, defendants, or any of them and that you must
 3 retain possession and control of all personal property, money, credits, debts, and effects and
 4 choses in action of said defendants, or any of them in order that the same may be dealt with
 5 according to law: where the amount you should retain shall be used in accordance with 15 U.S.C
 6 1673 and Nevada Revised Statutes 31.295.

7 YOU ARE REQUIRED to answer the interrogatories attached hereto within twenty days
 8 from date of such service. Plaintiff states that he/she has good reason to believe, and does
 9 believe that you have property, money, goods, and chattels, credits, or effects, in your hands and
 10 under your custody and control belonging to said defendants of value of **\$176,836.08**. In case of
 11 your failure within the time afore said to answer the interrogatories, a judgment by default in the
 12 amount demanded may be entered against you.

13 YOU ARE FURTHER REQUIRED to serve a copy of your answers to the Writ of
 14 Garnishment on Plaintiffs' attorney whose address appears below. Any checks issued in relation
 15 to this case shall be made payable to: **Christensen James & Martin** and shall be delivered to
 16 Daryl E. Martin, Esq. at 7440 W Sahara Ave., Las Vegas, Nevada 89117.

17 CHRISTENSEN JAMES & MARTIN

Gary D. Orton, United States Marshal

18 By: /s/ Daryl E. Martin 12/21/09
 19 Daryl E. Martin, Esq. Date

By: [Signature] 1/6/10
 Supervisory DUSM Date

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH

1. Are you in any manner indebted to the Defendant(s) **Riggio Brothers Construction, Inc.** or **Bione D. Riggio**, or any of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

ANSWER: Yes, due when we receive retention from
Owner. \$ 14,130.95

2. Are you an employer of one of the Defendant(s)? If so, state the length of your pay period and the amount each Defendant presently earns during a pay period.

ANSWER: NO

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, goods, chattels, rights, credits or choses in the action of the Defendant(s), or any of them, or in which Defendant(s) is/are interested? If so, state its value and state fully all particulars.

ANSWER: \$ 14,130.95 due when Clark County
Water Reclamation pays Rafael Construction

4. Do you know of any debts owing to the Defendant(s), whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to the Defendant(s), or any of them, or in which Defendant(s) is/are interested, and now in possession or under the control of others? If so, state particulars.

ANSWER: NO

///

5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER: Catherine Robinson Controller Rafael Contreras
7120 Rafael Ridge Way
Las Vegas NV 89119

6. NOTE: If an employer, without legal justification, refuses to withhold the earnings of a Defendant demanded in a WRIT OF GARNISHMENT or knowingly misrepresents the earnings of the Defendant(s), the Court shall order the employer to pay the Plaintiff the amount of arrearages caused by the employer's refusal to withhold or his misrepresentation of the Defendant's earnings. In addition, the Court may order the employer to pay the Plaintiff punitive damages in an amount not to exceed \$1,000 for each pay period in which the employer has, without legal justification, refused to withhold the Defendant's earnings or has misrepresented the earnings.

I Catherine Robinson do solemnly swear and affirm that the answers to the foregoing interrogatories are true and correct.

State of Nevada)
) ss.
County of Clark)

Subscribed and Sworn to before me this day of January 6th, 2010.

Joanna Buckley
Notary Public

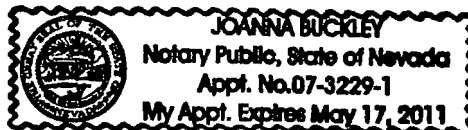


Exhibit 4

CHRISTENSEN JAMES & MARTIN
Kevin B. Christensen, Esq.
Nevada Bar No. 000175
Daryl E. Martin, Esq.
Nevada Bar No. 006735
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMPLOYEE PAINTERS TRUST; PAINTERS
VACATION TRUST; PAINTERS JOINT
COMMITTEE; PAINTERS JOINT
APPRENTICESHIP TRAINING COMMITTEE;
PAINTERS INDUSTRY PROMOTION FUND;
PAINTERS JOINT COMMITTEE INDUSTRY
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PROGRAM, each acting by and through their
designated fiduciaries John Smirk and/or Thomas
Pfundstein; and the INTERNATIONAL UNION
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INDUSTRY PENSION TRUST FUND, acting by
and through its designated fiduciary Gary J.
Meyers,

Plaintiffs,

v.

RIGGIO BROTHERS CONSTRUCTION, INC., a
Nevada Corporation; BIONE D. RIGGIO, an
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corporation qualified to act as surety in the State of
Nevada; JOHN DOES I-XX, inclusive; ROE
ENTITIES I-XX inclusive,

Defendants.

Case No.: 2:09-CV-01831-KJD-PAL

WRIT OF GARNISHMENT

To: Straub Construction Inc:

YOU ARE HEREBY NOTIFIED that you are attached as garnishee in the above-entitled

CHRISTENSEN JAMES & MARTIN
7440 W. SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

RECEIVED
MARSHAL
UNITED STATES DISTRICT OF NEVADA
2009 DEC 22 PM 3 49

RECEIVED
MARSHAL
UNITED STATES DISTRICT OF NEVADA
2010 JAN 8 AM 10 28

1 action and you are commanded not to pay any debt due from yourself to the said, **Riggio**
 2 **Brothers Construction, Inc.** or **Bione D. Riggio**, defendants, or any of them and that you must
 3 retain possession and control of all personal property, money, credits, debts, and effects and
 4 choses in action of said defendants, or any of them in order that the same may be dealt with
 5 according to law: where the amount you should retain shall be used in accordance with 15 U.S.C
 6 1673 and Nevada Revised Statutes 31.295.

7 YOU ARE REQUIRED to answer the interrogatories attached hereto within twenty days
 8 from date of such service. Plaintiff states that he/she has good reason to believe, and does
 9 believe that you have property, money, goods, and chattels, credits, or effects, in your hands and
 10 under your custody and control belonging to said defendants of value of **\$176,836.08**. In case of
 11 your failure within the time afore said to answer the interrogatories, a judgment by default in the
 12 amount demanded may be entered against you.

13 YOU ARE FURTHER REQUIRED to serve a copy of your answers to the Writ of
 14 Garnishment on Plaintiffs' attorney whose address appears below. Any checks issued in relation
 15 to this case shall be made payable to: **Christensen James & Martin** and shall be delivered to
 16 Daryl E. Martin, Esq. at 7440 W Sahara Ave., Las Vegas, Nevada 89117.

17 CHRISTENSEN JAMES & MARTIN

Gary D. Orton, United States Marshal

18 By: /s/ Daryl E. Martin 12/21/09
 19 Daryl E. Martin, Esq. Date

By: [Signature] 1-20
 Supervisory DUSM Date
 15KA

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH

1. Are you in any manner indebted to the Defendant(s) **Riggio Brothers Construction, Inc.** or **Bione D. Riggio**, or any of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

ANSWER: Straub Construction, Inc. is holding a progress payment in the amount of \$12,222.01. Additionally, SCI is holding retention in the amount of \$85,790.31. The retention payment is not due and will not be due until 35 days after SCI receives final payment from the Owner.

2. Are you an employer of one of the Defendant(s)? If so, state the length of your pay period and the amount each Defendant presently earns during a pay period.

ANSWER: No.

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, goods, chattels, rights, credits or choses in the action of the Defendant(s), or any of them, or in which Defendant(s) is/are interested? If so, state its value and state fully all particulars.

ANSWER: See #1

4. Do you know of any debts owing to the Defendant(s), whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to the Defendant(s), or any of them, or in which Defendant(s) is/are interested, and now in possession or under the control of others? If so, state particulars.

ANSWER: No.

///

5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER: Kyle Campbell
Risk Manager/Corporate Counsel
Straub Construction, Inc.
202 W. College St., Suite 201
Fallbrook, CA 92028

6. NOTE: If an employer, without legal justification, refuses to withhold the earnings of a Defendant demanded in a WRIT OF GARNISHMENT or knowingly misrepresents the earnings of the Defendant(s), the Court shall order the employer to pay the Plaintiff the amount of arrearages caused by the employer's refusal to withhold or his misrepresentation of the Defendant's earnings. In addition, the Court may order the employer to pay the Plaintiff punitive damages in an amount not to exceed \$1,000 for each pay period in which the employer has, without legal justification, refused to withhold the Defendant's earnings or has misrepresented the earnings.

I Kyle Campbell do solemnly swear and affirm that the answers to the foregoing interrogatories are true and correct.

State of Nevada)
County of Clark) ss.

Subscribed and Sworn to before me this day of _____, 20____.

Notary Public

State of California
County of San Diego

Subscribed and sworn to before me this 22nd day of January, 2010 by Stacey L. Jeffers, Notary Public and proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Stacey L. Jeffers



Exhibit 5

CHRISTENSEN JAMES & MARTIN

Kevin B. Christensen, Esq.
Nevada Bar No. 000175
Daryl E. Martin, Esq.
Nevada Bar No. 006735
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EMPLOYEE PAINTERS TRUST; PAINTERS
VACATION TRUST; PAINTERS JOINT
COMMITTEE; PAINTERS JOINT
APPRENTICESHIP TRAINING COMMITTEE;
PAINTERS INDUSTRY PROMOTION FUND;
PAINTERS JOINT COMMITTEE INDUSTRY
PROMOTION FUND; PAINTERS ORGANIZING
FUND; PAINTERS LABOR MANAGEMENT
COOPERATION COMMITTEE; PAINTERS
LABOR MANAGEMENT COOPERATION
INCENTIVE; PAINTERS HEALTH AND
SAFETY AND UPGRADE TRAINING AWARD
PROGRAM, each acting by and through their
designated fiduciaries John Smirk and/or Thomas
Pfundstein; and the INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES
INDUSTRY PENSION TRUST FUND, acting by
and through its designated fiduciary Gary J.
Meyers,

Plaintiffs,

v.

RIGGIO BROTHERS CONSTRUCTION, INC., a
Nevada Corporation; BIONE D. RIGGIO, an
individual; WESTERN SURETY COMPANY, a
corporation qualified to act as surety in the State of
Nevada; JOHN DOES I-XX, inclusive; ROE
ENTITIES I-XX inclusive,

Defendants.

Case No.: 2:09-CV-01831-KJD-PAL

**JUDGMENT AGAINST RAFAEL
CONSTRUCTION, INC. IN
FAVOR OF RIGGIO BROTHERS
CONSTRUCTION, INC. IN
FAVOR OF PLAINTIFFS, AND
ORDER TO PAY**

1 Pursuant to the Application of the Plaintiffs ("Trust Funds") for issuance of this Court's
2 Judgment in Favor of Riggio Brothers Construction, Inc. ("RBC") for the Use of Plaintiffs and
3 Against Garnishee Rafael Construction, Inc. ("Rafael"), and Rafael's admissions in its Answer to
4 the Writ of Garnishment, and Good Cause Appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

- 6 1. Judgment is entered against Rafael Construction, Inc. and in favor of RBC for the
7 benefit and use of Plaintiffs in the amount of \$14,130.95; and
8 2. Rafael shall pay the Trust Funds \$14,130.95 within ten (10) days after receiving
9 notice of this Judgment and Order to Pay, or as soon as funds are received from
10 Clark County Water Reclamation, whichever is later.
11

12 DATED and DONE this _____ day of _____, _____.
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15 _____
16 DISTRICT JUDGE
17

18 Submitted by:
CHRISTENSEN JAMES & MARTIN

19 By: /s/ Daryl E. Martin
20 Daryl E. Martin, Esq.
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CHRISTENSEN JAMES & MARTIN

Kevin B. Christensen, Esq.
Nevada Bar No. 000175
Daryl E. Martin, Esq.
Nevada Bar No. 006735
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EMPLOYEE PAINTERS TRUST; PAINTERS
VACATION TRUST; PAINTERS JOINT
COMMITTEE; PAINTERS JOINT
APPRENTICESHIP TRAINING COMMITTEE;
PAINTERS INDUSTRY PROMOTION FUND;
PAINTERS JOINT COMMITTEE INDUSTRY
PROMOTION FUND; PAINTERS ORGANIZING
FUND; PAINTERS LABOR MANAGEMENT
COOPERATION COMMITTEE; PAINTERS
LABOR MANAGEMENT COOPERATION
INCENTIVE; PAINTERS HEALTH AND
SAFETY AND UPGRADE TRAINING AWARD
PROGRAM, each acting by and through their
designated fiduciaries John Smirk and/or Thomas
Pfundstein; and the INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES
INDUSTRY PENSION TRUST FUND, acting by
and through its designated fiduciary Gary J.
Meyers,

Plaintiffs,

v.

RIGGIO BROTHERS CONSTRUCTION, INC., a
Nevada Corporation; BIONE D. RIGGIO, an
individual; WESTERN SURETY COMPANY, a
corporation qualified to act as surety in the State of
Nevada; JOHN DOES I-XX, inclusive; ROE
ENTITIES I-XX inclusive,

Defendants.

Case No.: 2:09-CV-01831-KJD-PAL

**JUDGMENT AGAINST STRAUB
CONSTRUCTION, INC. IN
FAVOR OF RIGGIO BROTHERS
CONSTRUCTION, INC. IN
FAVOR OF PLAINTIFFS, AND
ORDER TO PAY**

1 Pursuant to the Application of the Plaintiffs ("Trust Funds") for issuance of this Court's
2 Judgment in Favor of Riggio Brothers Construction, Inc. ("RBC") for the Use of Plaintiffs and
3 Against Garnishee Straub Construction, Inc. ("Straub") and Straub's Admissions in its Answer to
4 the Writ of Garnishment, and Good Cause Appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

- 6 1. Judgment is entered against Straub and in favor of RBC for the benefit and use of
7 Plaintiffs in the amount of \$98,012.32;
8
9 2. Straub shall pay the Trust Funds \$12,222.01 within ten (10) days of receiving notice
10 of this Judgment and Order to Pay; and
11
12 3. Straub shall pay the Trust Funds \$85,790.31 within ten (10) days after receiving
13 notice of this Judgment and Order to Pay, or thirty-five (35) days after the funds are
14 received from the property owner, whichever is longer.

15 DATED and DONE this _____ day of _____, _____.

16
17
18 _____
DISTRICT JUDGE

19
20 Submitted by:
CHRISTENSEN JAMES & MARTIN

21 By: /s/ Daryl E. Martin
22 Daryl E. Martin, Esq.
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